

EPA PREPARED THESE FREQUENTLY ASKED QUESTIONS AND ANSWERS IN AN EFFORT TO ASSIST POTENTIAL APPLICANTS FOR BROWNFIELDS GRANTS. PLEASE REVIEW THE OCTOBER 2003 GRANT APPLICATION GUIDELINES WHEN PREPARING YOUR APPLICATION. IF THERE IS A CONFLICT BETWEEN THE ANSWER TO A QUESTION AND THE STATUTE, REGULATION, OR THE GUIDELINES, THE STATUTE, REGULATION OR THE GUIDELINES TAKE PRECEDENCE.

Brownfield Grant Guidelines Frequently Asked Questions (FAQ)

I. Definitions and Grant Eligibility

A. Definitions

Q1. What is a Brownfields Site?

A1. For the purposes of EPA's Brownfields grant program, a "Brownfields Site" is: "...real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant." In order to be eligible for Brownfields grant funding, the site(s) covered by your application must meet the definition of a Brownfield site.

Brownfields sites include, but are not limited to, three specific types of properties eligible for funding:

- sites contaminated by petroleum or a petroleum product;*
- sites contaminated by controlled substances; and,*
- mine-scarred lands.*

Some sites are excluded from the definition of a Brownfield site unless EPA makes a "property-specific funding determination" that allows grant funds to be used at that site. This process is explained below and in Appendix 4 of the Brownfields grant application guidelines.

For a more detailed discussion of Brownfields sites eligible for funding, please refer to Appendices 3 and 4 of the Guidelines.

(http://www.epa.gov/brownfields/pg/fy04_proposal_guidelines_a3.htm and http://www.epa.gov/brownfields/pg/fy04_proposal_guidelines_a4.htm)

Q2. How does EPA interpret "non-profit organization" and how can such organizations participate in brownfields revitalization under the new amendments?

A2. For the purposes of the brownfields grant program, EPA will use the definition of non-profit organizations contained in Section 4(6) of the Federal Financial Assistance Management

Improvement Act of 1999, Public Law 106-107. 31 USC 6101, Note.

This law defines non-profit organizations to mean “any corporation, trust, association, cooperative, or other organization that--

- (A) is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;*
- (B) is not organized primarily for profit; and*
- (C) uses net proceeds to maintain, improve, or expand the operations of the organization.*

EPA will accept documentation from the U.S. Internal Revenue Service (e.g. 501(c)(3) tax exempt status) or from a State or tribal government that has authority under its laws to grant non-profit status to an organization.

Non-profit organizations, with the exception of organizations subject to section 501(c)(4) of the Internal Revenue Code that lobby, are eligible to receive cleanup grants and subgrants under Revolving Loan Fund (RLF) capitalization grants. Non-profit organizations are also eligible to receive job training grants. See the Proposal Guidelines for Brownfields Job Training Grants for further information (http://www.epa.gov/brownfields/pg/0903_jtguide_toc.htm).

Non-profit organizations are not eligible to receive brownfields assessment or RLF grants under 104(k)(2) or (3).

B. Eligibility and Ineligibility

Q3. Who is eligible to apply for the grants?

A3. The Brownfields law defines entities eligible to receive grants. These include:

- # Governmental entities eligible to apply for and receive assessment and revolving loan fund grants include state, local, and tribal governments, with the exception of Indian tribes in Alaska, as well as a range of government entities, including: a general purpose unit of local government or land clearance authority or other quasi-governmental entity operating under the control, supervision, or as an agent of a local government, a governmental entity or redevelopment agency created or sanctioned by a State, or a regional council of governments. An Alaska Native Regional Corporation and an Alaska Native Village Corporation as those terms are defined in the Alaska Native Claims Settlement Act, and the Metlakatla Indian community are eligible.*
- ! Entities eligible to apply for and receive cleanup grants include those eligible governmental entities identified above as well as non-profit organizations and*

non-profit educational institutions. (Please see another Question and Answer for EPA's definition of a non-profit organization that applies to this program). All eligible entities, including non-profit organizations, must own the site and provide documentation to demonstrate ownership (e.g. copy of the fee simple title) prior to the award of the cooperative agreement and no later than Sept. 30, 2004.

- ! Entities eligible to apply for and receive job training grants include those eligible governmental entities identified above as well as non-profit organizations, including non-profit educational institutions.*
- ! For profit organizations are not eligible for Brownfields grant funding from EPA.*

Q4. What sites are not eligible for property-specific funding determinations for Brownfields grants?

A4. Under the Brownfields Law, three types of sites are not eligible for brownfields grant funds because they are not eligible for property-specific determinations:

- ! a facility that is listed on the National Priorities List (NPL) or is proposed for listing;*
- ! a facility that is the subject of a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree that has been issued to or entered into by the parties under CERCLA; and,*
- ! a facility that is subject to the jurisdiction, custody or control of a department, agency, or instrumentality of the United States, except for land held in trust by the United States for an Indian tribe.*

Q5. Are properties on lands held in trust by the Federal government for Indian tribes eligible for brownfields grant funding?

A5. Generally, properties on lands held in trust by the Federal government for Indian tribes are eligible for brownfields grant funding. You should contact your Brownfields coordinator for further information.

Q6. What happens if I accidentally include an ineligible site in my application or I didn't realize I needed a property-specific funding determination?

A6. EPA may provide applicants a limited opportunity to clarify site eligibility issues during the proposal application process. If EPA has reason to believe a site that falls in the "excluded" category is eligible for a property-specific funding determination, EPA may seek clarification. EPA strongly encourages applicants to evaluate their site against the information provided in Appendix 4 of the guidelines. In addition, applicants should contact their Regional Brownfields Coordinators for pre-application assistance on site eligibility.

Applicants may not substitute sites if EPA determines a site is not eligible.

Q7. How do I know if I need to apply for a property-specific funding determination?

A7. A list of the types of sites that only are eligible for Brownfields funding via a property-specific determination is provided in Appendix 4 of the Brownfields grant proposal guidelines. Grant applicants must determine if any properties, or facilities, included in their proposal require a property-specific funding determination, and then provide EPA with the information necessary to make this determination.

*EPA makes property-specific funding determinations based on whether the grant will protect human health and the environment, **and** either promote economic development or enable the creation, preservation or addition of parks, green ways, undeveloped property, recreational property, or other property used for non-profit purposes.*

Applicants should review the list of sites eligible for a property-specific determination in Appendix 4 of the Guidelines (http://www.epa.gov/brownfields/pg/fy04_proposal_guidelines_a4.htm) and contact your EPA Regional Brownfields Coordinator if you have further questions regarding property-specific funding determinations.

Q8. Are facilities with permits issued under environmental statutes or regulations excluded from eligibility for brownfields funding?

A8. Yes. However, they may be eligible for funding if EPA makes a property-specific funding determination, as provided in the Brownfields amendments. EPA must make a property-specific funding determination for facilities with permits issued under the authorities of the Resource Conservation and Recovery Act (RCRA), Toxic Substances and Control Act (TSCA), and the Safe Drinking Water Act (SDWA), as well as facilities with permits issued under section 1321 of the Clean Water Act (the oil and hazardous substance liability provisions) as they are excluded from the definition of a brownfield.

*Therefore, in order to be eligible, when applying for funding for these sites, you must provide documentation that such funding will protect human health and the environment **and**, either 1) promote economic development or 2) enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for non-profit purposes.*

Q9. Are RCRA sites eligible for Brownfields grant funding?

A9. Some RCRA sites may be eligible. RCRA facilities that may be eligible for Brownfields funding, (subject to meeting all other Brownfields grant eligibility requirements), include:

- RCRA interim status facilities that are not subject to any administrative or judicial order or consent decree;
- RCRA interim status facilities that are subject to administrative or judicial orders or consent decrees that do not include corrective action requirements or any other cleanup provisions (e.g., RCRA §3008(a) orders without provisions requiring the owner/operator to address contamination); and
- Parcels of RCRA facilities that are not under the scope of a RCRA permit or administrative or judicial order to conduct corrective action.

In addition, the RCRA facilities identified in § 101(39)(B) may be eligible for property-specific Brownfields grant funding determined by EPA. Without a property-specific funding determination provided for in §101(39)(C), these specified RCRA facilities can not receive grant or loan funding. When making this determination, EPA assesses if Brownfields funding for assessment or cleanup activities will:

- ensure protection of human health and the environment; **and** either
- promote economic development, or
- promote the creation, preservation, or addition to parks, green ways, undeveloped facility, other recreational facility, or other facility used for purposes.

Q10. Are former military installations that have been closed and subsequently turned over to local and/or state governments or non-profit organizations eligible for funding under the FY04 guidelines?

*A10. Yes. Generally, former military installations that are no longer owned or under the custody of the U.S. government, including properties that have been closed and subsequently turned over to governments or non-profit organization may be eligible for brownfields funding. **For example, the following types of facilities may be eligible for brownfields funding:***

1. Privately-owned, Formerly Used Defense Sites (FUDS)
2. Privately-owned, Formerly Utilized Sites Remedial Action Program (FUSRAP) properties.
3. Other former federal properties that have been disposed of by the U.S. government.

*Facilities owned by, or under the custody or control of the federal government **are not eligible** for brownfields funding with the exception of land held in trust for an Indian tribe. Applicants should contact their Regional Brownfields Coordinator for additional information.*

II. General Application Information

Q11. How has the application process for Brownfields assessment, revolving loan fund and cleanup grants changed in FY 2004?

A11. EPA was pleased to receive over 1300 proposals for Brownfields grants in FY 2003. This national interest in the new law resulted in a highly competitive selection process, with a total of 214 grants announced nationwide.

EPA estimates that \$100 million will be available to make up to 200 grant awards, contingent upon the availability of funds in FY 2004.

Criteria and prohibitions, which are statutorily based, remain the same in FY 2004. However, the application process has changed for FY 04, based upon feedback received on the FY 2003 process, including the following:

- ! The proposal application process will be one step.*
- ! Applicants must submit their proposal(s) by December 4, 2003. To submit a proposal, applicants must send an original proposal to Don West, Environmental Management Support, Inc., 8601 Georgia Avenue, Suite 500, Silver Spring, MD 20910, phone 301-589-5318, and a copy to their Regional Brownfields Coordinator at the addresses shown in Appendix 1. Refer to the section, What Are the General Proposal Requirements?, for instructions on preparing proposals. Proposals must be postmarked or sent via registered or tracked mail to Environmental Management Support, Inc. and the appropriate Regional representative by **December 4, 2003**.*
- ! Applicants submitting proposals for cleanup grants must explain the site assessment activities that have been completed to date. At a minimum, an applicant must have completed a Phase I site assessment in order to apply for a cleanup grant.*
- ! Applicants must provide a cover letter that briefly describes the overall Brownfields project and how funding this proposal will advance project goals. The letter must be prepared on the applicant's letterhead and signed by an official of the organization.*
- ! Applicants for grants to assess or cleanup petroleum contaminated sites must pay particular attention to the changes that have been made to specific site eligibility information under the guidelines for each grant type and Appendix .*
- ! Applicants should pay particular attention to the page limitations which have been instituted and the general proposal requirements found at page 10 of the guidelines. (http://www.epa.gov/brownfields/pg/fy04_proposal_guidelines.htm#grant)*
- ! Proposals **must** be no more than 15 single-sided pages in length, not including the cover letter and attachments. Attachments should be kept to a minimum. Pages of an application which **EXCEED** the page limit will **NOT** be reviewed.*

Q12. What is the grant application process in Fiscal Year 2004?

A12. EPA has prepared guidelines on the application process for three types of grants: assessment; revolving loan fund; and cleanup. The process for applying for assessment, revolving loan fund and cleanup grants is a one step process as discussed in the new guidelines (http://www.epa.gov/brownfields/pg/fy04_proposal_guidelines.htm#grant). The one step process of applying for the job training program is discussed in a separate set of guidelines for the job training program (http://www.epa.gov/brownfields/pg/0903_jtguide_toc.htm).

*To submit original proposal applications for assessment, revolving loan fund and cleanup grants, applicants must send an original proposal to Don West, Environmental Management Support, Inc., 8601 Georgia Avenue, Suite 500, Silver Spring, MD 20910, phone 301-589-5318, and a copy to their Regional Brownfields Coordinator at the addresses shown in Appendix 1. Refer to the section, What Are the General Proposal Requirements?, for instructions on preparing proposals. Proposals must be postmarked or sent via registered or tracked mail to Environmental Management Support, Inc. and the appropriate Regional representative by **December 4, 2003**.*

*Prior to December 4, 2003, if resources permit, EPA Regions may conduct open meetings with potential applicants. Please check with your regional office for date and location information. EPA Regions will also respond to questions from individual applicants about any of the threshold criteria, including site eligibility and property ownership. Upon request, Regional staff may review pertinent documents relating to these threshold criteria. However, in accordance with EPA's Competition Policy, EPA staff will **not** meet with individual applicants to discuss draft proposals, provide informal comments on draft proposals, or provide advice to applicants on how to respond to **ranking** criteria.*

*Proposals will be evaluated and ranked by evaluation panels. These panels will evaluate responses to threshold criteria on a pass/fail basis and will evaluate responses to ranking criteria on a numerical scoring basis. If a proposal fails to meet a threshold requirement, it will receive no further consideration. However, EPA may seek clarification from an applicant regarding its response to the threshold criteria. (**Note: EPA will not seek clarification on an applicant's response to the Cover Letter and Applicant Information section or the ranking criteria.**) Scores on each **ranking criterion** will be totaled to determine proposal rankings.*

*Funding requests for each grant type will be **evaluated and ranked separately**.*

Final selections will be made by EPA senior management based upon the ranking of proposals by National Evaluation Panels. EPA decisions may take into account other statutory and policy considerations (see below).

Successful proposal applicants will be informed in writing of their selection.

Funding will be awarded as a cooperative agreement. EPA anticipates substantial involvement

with the cooperative agreement recipient. The applicants whose proposals are selected will be asked to submit a cooperative agreement application package to their EPA Regional office. This package will include an EPA-approved work plan, a final budget, and required forms. Cooperative agreements approved under this final selection step will include terms and conditions. These terms and conditions will be binding on the grant recipient and cover areas such as complying with all applicable federal and state laws and ensuring that cleanups protect human health and the environment. Applicants also will be required to submit progress reports in accordance with grant regulations found in 40 CFR 30.51 or 40 CFR 31.40. In addition, successful grant applicants will be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number, which is now required when applying for federal grants or cooperative agreements on or after October 2003. For more information, please go to www.grants.gov. EPA will work closely with the applicant to process and finalize the cooperative agreement package.

Any disputes regarding proposals or applications submitted in response to these guidelines will be resolved in accordance with 40 CFR 30.63 and Part 31, Subpart F.

In accordance with Executive Order 12372, EPA encourages applicants to contact their State Intergovernmental Review Office early so that the required intergovernmental review process may begin immediately upon selection by EPA. If the state does not have an Intergovernmental Review Office, the successful applicant must provide notice of the proposed agreement directly to affected state, area-wide, regional, and local entities. Contact your Regional Brownfields Contact for assistance, if needed.

EPA reserves the right to reject any or all proposals or applications and make no awards.

EPA anticipates that successful applicants will be notified in April 2004.

For additional information regarding the FY 2004 grant application process for brownfields assessment, revolving loan fund and cleanup grants, contact your EPA Regional Brownfield Coordinator.

Q13. How do I get help in understanding and responding to the new grant proposal guidelines?

A13. EPA urges applicants to review the grant proposal guidelines carefully and any supplemental information on the EPA brownfields website.

Applicants may contact their EPA Regional Brownfields Coordinator for general information or questions regarding the threshold criteria, including eligibility. A list of EPA Regional Brownfields Coordinators and their mailing addresses can be found in Appendix 1 of the guidelines or at (http://www.epa.gov/brownfields/pg/fy04_proposal_guidelines_a1.htm).

Prior to December 4, 2003, if resources permit, EPA Regions may conduct open meetings with

potential applicants. Please check with your regional office for date and location information. EPA Regions will also respond to questions from individual applicants about any of the threshold criteria, including site eligibility and property ownership. Upon request, Regional staff may review pertinent documents relating to these threshold criteria. However, in accordance with EPA's Competition Policy, EPA staff will **not** meet with individual applicants to discuss draft proposals, provide informal comments on draft proposals, or provide advice to applicants on how to respond to **ranking** criteria.

All applications will be reviewed and evaluated objectively against the criteria identified in the grant guidelines and ranked based upon their written response. **With the exception of threshold eligibility matters** EPA Regional Brownfields Coordinators may not provide comment or assistance in the preparation of a proposal. **Applicants are responsible for making decisions on the content of their proposals.**

Q14. How much money is available through individual grants?

A14. Under the new Brownfields law, an eligible entity may apply for:

- ! *Assessment Grants. An eligible entity may apply for up to \$200,000 to assess a site contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) and up to \$200,000 to address a site contaminated by petroleum. Applicants may seek a waiver of the \$200,000 limit and request up to \$350,000 for a site contaminated by hazardous substances, pollutants, or contaminants and up to \$350,000 to assess a site contaminated by petroleum. Such waivers must be based on the anticipated level of hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) at a single site. Total grant fund requests should not exceed a total of \$400,000 unless such a waiver is requested. Due to budget limitations, no entity may apply for more than \$700,000 in assessment funding. The performance period for an Assessment Grant is 2 years.*
- ! *Revolving Loan Fund Grants. Grants may be awarded up to \$1 million for an initial revolving loan fund (RLF) grant. A coalition of eligible entities may apply together under one application for up to \$1 million per eligible entity. The performance period for a Revolving Loan Fund Grant is 5 years.*
- ! *Cleanup Grants. Grants may be awarded up to \$200,000 per site for cleanup. Due to budget limitations, no entity should apply for funding cleanup activities at more than five sites. The performance period for a Cleanup Grant is 2 years.*

Q15. Must I 'own' the site, when I apply for a Cleanup grant?

A15. No. However, by statute, cleanup grant recipients and revolving loan fund subgrant recipients must own these sites at the time of grant award. For budget purposes, EPA has established a policy that, for cleanup grants, the site must be owned by September 30, 2004 for

this FY grant cycle. If an applicant does not own the property by that date, EPA will deem that site ineligible for funding under the Fiscal Year 2004 grant cycle, and the applicant may reapply in future years. The ownership requirement can be met through fee simple title. Other arrangements may be considered on a case-by-case basis. For example, applicants that do not yet “own” the site, may apply if there is an irrevocable agreement to sell or donate the land to the applicant prior to award of the grant, or if the applicant receives the grant.

Q16. Do tribes “own” tribal trust lands for purposes of a brownfields cleanup grants and RLF cleanup subgrants?

A16. Generally, EPA believes tribes have a sufficient ownership interest in tribal trust lands to “own” such lands for purposes of brownfields cleanup grants and RLF cleanup subgrants. Applicants should contact their Regional Brownfields Coordinator for additional information.

Q17. Do applicants for brownfields grants (assessment, revolving loan fund or cleanup grant) need to inform their State regarding the submission of a grant proposal to EPA?

A17. Yes. Applicants (other than a State or tribal environmental authority) must provide a letter from a State or Tribal environmental authority that acknowledges the applicant’s planned activities in their grant proposal. Only one letter reflecting all proposed activities is needed if the applicant applies for multiple grant types or multiple grants.

Q18. What is meant by community notification?

A18. The grant guidelines require applicants to notify the community about the preparation and submission of the brownfields grant proposal(s) for FY 04 grant funding and provide an opportunity for public comment about the proposal(s). EPA must determine that the applicant has adequately notified the community regarding the proposal to pass this threshold requirement.

Community notification has been an important facet of the brownfields program since its inception and remains an important element under the new amendments. The applicant must describe how the community was notified. Some examples of community notification include:

- discussing a brownfields proposal during a government (e.g. city council sessions) meeting;*
- holding a public meeting;*
- placing a public notice in a local newspaper or community bulletin board; or*
- notifying affected residents door-to-door.*

Applicants may describe other methods used to notify the community.

III. Use of Brownfield Grant Funding

A. General Brownfield Grant Information

Q19. Can I use brownfields grant funds to purchase environmental insurance?

A19. Yes. Applicants that receive grants or loans to perform characterization, assessment or cleanup of a brownfields site may use a portion of their brownfields grant or loan funds to purchase environmental insurance. Purchases must be consistent with the applicable OMB Cost Circulars: A-21 is applicable to universities and educational institutions, A-87 is applicable to governmental units, and A-122 is applicable to non-profit organizations.

Q20. As a local government applicant, what program activities can be funded under the 10% provision of the new amendments?

A20. Under new section 104(k)(4)(C) of CERCLA, a local government may use not to exceed 10 percent of the grant funds to develop and implement a brownfields program. These activities may include use of up to 10 percent of its grant funds for monitoring the health of populations exposed to one or more hazardous substances, pollutants, or contaminants from a brownfield site and monitoring and enforcement of any institutional control used to prevent human exposure to any hazardous substance, pollutant, or contaminant from a brownfield site. To effectively oversee assessments and cleanups, local governments may use grant funds (subject to the 10 percent limit) for other related program development and implementation activities. Activities planned for the 10 percent category should be included in a separate budget task.

Q21. Can brownfields grant funds be used to assess or clean up sites contaminated with PCBs?

A21. ALL portions of properties potentially contaminated with PCBs may be eligible for brownfields site assessment, cleanup and revolving loan fund grants (without a property-specific determination), except where EPA has initiated an involuntary action to address PCB contamination at the facility or a portion of a facility.

Any facility, or portion of a facility, that is the subject of an EPA-initiated involuntary action to address PCB contamination may be eligible for funding if EPA makes a property-specific funding determination.

B. Assessment Grants

Q22. Can I apply for assessment supplemental funds on a non-competitive basis under the new amendments?

A22. No. There are no provisions for non-competitive supplemental funding for brownfields assessment grants. However, existing assessment grant recipients can compete for new grants and receive funding within the limits established by the new Brownfields law (see earlier question).

C. Revolving Loan Fund Grants

Q23. What does an existing revolving loan fund (RLF) pilot do to “transition” under the new Law?

A23. A Brownfields Cleanup Revolving Loan Fund (BCRLF) pilot established prior to January 11, 2002 may “transition” under the new Brownfields Law. The EPA has published guidelines on how to transition that can be found on the EPA website (<http://www.epa.gov/brownfields/html-doc/bcrlf-0.htm>).

These guidelines were sent directly to all the current BCRLF pilots in October 2002. The transition process will be managed through EPA Regional offices. Requests for transition may be made only during a specified “open season.” EPA has determined that the next open season will be between October 2003 and March 2004. In subsequent years, BCRLF pilots that choose to do so may transition during an ‘open season’ that will be announced by EPA.

Q24. Who can apply for RLF non-competitive supplemental funds under the Brownfields Law, and how do they apply?

A24. Only RLF recipients awarded grants under the 2002 Brownfields law (in subsequent years after their initial award) , and existing BCRLF pilots who “transition” to the new program, can apply for non- competitive supplemental funding. The EPA will consider supplemental funding based on the following statutory considerations:

- ! the number of sites and the number of communities addressed;*
- ! the demand for funding by eligible entities that have not previously received a grant under the new amendments;*
- ! the demonstrated ability of the eligible entity to use the revolving loan fund (RLF) to enhance remediation and provide funds on a continuing basis; and,*
- ! such other factors as the Agency considers appropriate to carry out*

the RLF.

RLF recipients interested in non-competitive supplemental funding must apply through their EPA Regional office. You should contact your Regional Brownfields coordinator for details. Funding selection will be made by the EPA on a “rolling basis” to the extent funds are available.

Q25. As an RLF grant recipient, will intra-governmental loans (i.e. loans between parts of the same governmental entity) be allowed under the Brownfields law?

A25. Yes. RLF recipients may make intra-governmental loans under the new Brownfields law.

Q26. As an RLF recipient, will intra-governmental cleanup subgrants be allowed under the Brownfields law?

A26. No. Cleanup subgrants, unlike loans, may not be made by the RLF recipients within the same governmental entity that receives the RLF grant (e.g. one department of a city government “subgrants” to another department of the same governmental entity). However, RLF recipients may choose to apply to EPA separately for a cleanup grant. RLF recipients may also make subgrants to different eligible governmental entities as well as non-profit organizations.

IV. Brownfields Liability Issues

Q27. Are tribes considered "potentially responsible parties" (PRPs) and therefore prohibited from using Brownfields grant funds to pay for response costs at a site for which the recipient is potentially liable under CERCLA § 107?

A27. Generally, EPA has not considered tribes to be liable as PRPs under CERCLA and, therefore, they are not subject to the statutory prohibition (however, the other prohibitions on uses of Brownfields funds may still apply). Applicants should contact their Regional Brownfields Coordinator for additional information.

Q28. What are the Interim Standards for conducting “All Appropriate Inquiry”?

A28. The law set two different interim standards for conducting "all appropriate inquiry" that apply depending on the date the property was purchased. These

standards will remain in effect until EPA promulgates final federal standards.

1. For properties purchased prior to May 31, 1997, the law provides that a court shall consider the following when making a determination with respect to a defendant: specialized knowledge or experience of the defendant, the relationship of the purchase price to the value of uncontaminated property, commonly known information about the property, the obviousness of contamination, and the ability of the defendant to detect contamination by appropriate inspection.

2. For properties purchased after May 31, 1997, the law requires the use of procedures developed by the American Society for Testing Materials (ASTM), in particular ASTM's standard E1527-97, or "Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process." In the final rule "Clarification to Interim Standards and Practices for All Appropriate Inquiry Under CERCLA and Notice of Future Rulemaking Action," EPA published a final rule on May 9, 2003 (68 FR 24888) establishing that the current ASTM standard, E1527-00, also will meet the "all appropriate inquiry" requirement for site characterizations and assessments.

Q29. What is “All Appropriate Inquiry” and who conducts “All Appropriate Inquiry” under the Brownfields law?

A29. The Brownfields Law establishes that site characterizations or assessments conducted by entities with the use of brownfields grants awarded under CERCLA Section 104(k)(2)(B)(ii) must be conducted in accordance with the "all appropriate inquiry" standards established under the law. For further information of the “common elements” of these landowner liability protections, see www.epa.gov/compliance/resources/policies/cleanup/superfund/common-element-guide.pdf

All appropriate inquiry refers to the requirements for assessing the environmental conditions of a property prior to its acquisition.

Subtitle B of Title II of the Brownfields Law revises some of the provisions of CERCLA Section 101(35) by clarifying the requirements necessary to establish the innocent landowner defense under CERCLA in addition to providing Superfund landowner liability protections for bona fide prospective purchasers and contiguous property owners. All of these landowner liability protections require that a person perform “all appropriate inquiry” into the previous ownership and uses before acquiring the property. Depending on the date of purchase, the Brownfields Law (§ 101(35)(B) of CERCLA) specifies the elements of the all appropriate inquiry to be applied.

To qualify as a bona fide prospective purchaser, a person must meet the criteria set forth in § 101(40) of CERCLA, purchase the property after January 11, 2002, and must perform all appropriate inquiry prior to purchase. These parties may buy knowing, or having reason to know, of contamination on the property.

To qualify as a contiguous property owner, a person who owns property that is contiguous or otherwise similarly situated to a facility that is the only source of contamination found on his/her property must meet the criteria set forth in CERCLA § 107 (q)(1)(A). Contiguous property owners must perform all appropriate inquiry prior to purchase and cannot know, or have reason to know, of contamination on the property.

To qualify as an innocent land owner, a person must meet the criteria set forth in CERCLA § 107(b)(3) and 101(35), perform all appropriate inquiry prior to purchase of a property and cannot know, or have reason to know, of contamination on the property.

Q30. What are the statutory criteria for conducting “All Appropriate Inquiry”?

A30. Congress directed EPA to establish, by regulation, standards and practices for conducting all appropriate inquiry. This will be accomplished through the process of regulatory negotiation. In the Brownfields Law, Congress directed EPA to include, within the standards for all appropriate inquiry, the ten criteria shown below:

The results of an inquiry by an environmental professional;

Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility;

Reviews of historical sources, such as chain of title documents, aerial photographs, building department records, and land-use records, to determine previous uses and occupancies of the real property since the property was first developed;

Searches for recorded environmental clean-up liens against the facility that are filed under Federal, State, or local law;

Reviews of Federal, State, and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal, and spill records concerning contamination at or near the facility;

Visual inspections of the facility and adjoining properties;

Specialized knowledge or experience on the part of the defendant;

The relationship of the purchase price to the value of the property if the property was not contaminated;

Commonly known or reasonably ascertainable information about the property; and

The degree of obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination by appropriate investigation.

V. Petroleum Brownfields

Q31. Can a petroleum brownfields grant be used for the assessment and/or cleanup of hazardous substances?

A31. Yes. As long as the principal purpose of the assessment grant is to assess a site potentially contaminated with petroleum or to clean up a petroleum contaminated site, a petroleum brownfields grant may be used for the incidental assessment and/or cleanup of hazardous substances.

Q32. What information should I provide to a state or EPA so that my petroleum contaminated site is eligible for grant funding?

A32. With the exception of Tribes, you must provide the following information, if reasonably ascertainable, to your state, in time for the state to make the necessary determinations for you to meet the December 4, 2003 deadline for submitting grant proposals to EPA.

Note, if your state is unable to make the determinations in Appendix 3, paragraph 3.3.2, you may request EPA consider the information provided and make the determinations. You must make your request to EPA to make these determinations no later than 2 weeks prior to the application deadline. Provide the following information:

- 1. Identify the current owner of the site, as well as any current operator, lessee, or other similarly situated party;*
- 2. Discuss the history of the property and identify the previous owners of the site, as well as any previous operators, lessees, or other similarly situated parties.*
- 3. Provide information regarding when the petroleum contamination occurred at the site and the parties that may have caused or contributed to the petroleum contamination at the site.*
- 4. Provide information regarding whether any party can be identified that is subject to either:*
 - (a) a judgment rendered in a court of law or an administrative order issued by an administrative body that would require that party to assess, investigate, or clean up the site; or*
 - (b) a filed enforcement action brought by Federal or State authorities, or is party to a citizen suit, that would, if successful, require that party to assess, investigate, or clean up the site;*
- 5. Provide information regarding whether the party having such legal*

*obligations has adequate financial resources to meet the obligation.
(www.epa.gov/compliance/civil/programs/econmodels)*

Your request to a state or EPA for the determinations on site eligibility also must include a brief explanation of why the information requested above may not be available. For example, an assessment grant applicant may need funding for a Phase I assessment to obtain some or all of this information regarding a site.

Q33. Based on the information I provide (see Question 32 above), what statutory determinations must my state (or EPA) make to assure that petroleum-contaminated sites (or portions of properties contaminated with petroleum) are eligible for brownfields funding.

A33. For a petroleum contaminated site(s) that otherwise meets the definition of a brownfields site to be eligible for funding, EPA or the state must determine:

1. the site is of Arelatively low risk@compared with other Apetroleum-only@ sites in the state; and

2. there is no viable responsible party; and

3. funding will be used by a party that is not potentially liable for the petroleum contamination to assess, investigate, or clean up the site.

In addition, petroleum-contaminated sites must not be subject to a corrective action order under the Resource Conservation and Recovery Act (RCRA) '9003(h).

With the exception of Tribes, applicants must first request that their state make these determinations. If the state is unable to make the determinations in time to meet the application deadline, the applicant may request that EPA make the determinations. The applicant must make this request to EPA no later than 2 weeks prior to the application deadline. For further information see Guidelines Appendix 3, part 3.3.2 Contamination by Petroleum or Petroleum Product.